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5 Attorneys for Defendants,
CITY OF OAKLAND, RICHARD WORD,
6 G. LOUD, S. BOWLING, F. BONIFACIO,
L. MILIKIN, and C. HARDISON
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 MILTON McMATH, individually; DEDRICK
SHIVERS, individually,

12 Plaintiffs,
13

14 v.

15 CITY OF OAKLAND, et al.

16 Defendants.
17

Case No. C 05-03111 EDL

**DEFENDANTS' ANSWER TO
COMPLAINT**

18 Defendants CITY OF OAKLAND, RICHARD WORD, G. LOUD, S.
19 BOWLING, F. BONIFACIO, L. MILIKIN, and C. HARDISON hereby answer, object, and
20 otherwise respond to the Complaint on file herein as follows.

21 **JURISDICTION**

22 1. Defendants are without knowledge or information sufficient to form a
23 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
24 every allegation contained herein.

25 **PARTIES**

26 2. Defendants are without knowledge or information sufficient to form a

1 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
2 every allegation contained herein.

3 3. Admitted.

4 4. Admitted.

5 5. Admitted.

6 6. Admitted.

7 7. Admitted.

8 8. Admitted.

9 9. Admitted.

10 10. Admitted.

11 11. Defendants are without knowledge or information sufficient to form a
12 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
13 every allegation contained herein.

14 12. Defendants deny the allegations set forth in this paragraph.

15 13. Defendants are without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
17 every allegation contained herein.

18 **STATEMENT OF FACTS**

19 14. Defendants deny the allegations set forth in this paragraph.

20 15. Admitted.

21 16. Defendants deny the allegations set forth in this paragraph.

22 17. Defendants deny the allegations set forth in this paragraph.

23 18. Defendants deny the allegations set forth in this paragraph.

24 19. Defendants admit that several Oakland Police vehicles and numerous
25 Oakland Police officers arrived on the scene, that other defendant officers, including
26 BONIFACIO and HARDISON arrived, and numerous people gathered. Defendants deny

20. Defendants deny that defendant HARDISON's blows with the nightstick were uncontrollable. Defendants admit each and every remaining allegation contained herein.

21. Defendants deny the allegations set forth in this paragraph.

22. Defendants admit that Officer MILLIKEN delivered and “hammer strike” with his fist to Plaintiff McMATH’s mouth, and the blow dislodged Plaintiff McMATH’S tooth. Defendants deny each and every remaining allegation contained herein.

23. Defendants admit that Plaintiff McMATH was handcuffed and arrested, that Plaintiff SHAVERS was arrested, Plaintiffs were transported to Alameda County Hospital and Plaintiffs were transported to Oakland City Jail. Defendants deny each and every remaining allegation contained herein.

24. Admitted.

25. Defendants admit that Plaintiff McMATH stood trial, Officers BOWLING, LOUD, BONIFACIO and HARDISON testified against Plaintiff McMATH, and Plaintiff McMATH was acquitted. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every remaining allegation contained herein.

26. Defendants deny the allegations set forth in this paragraph.

DAMAGES

27. Defendants deny the allegations set forth in this paragraph.

28. (erroneously numbered as 29)

Defendants deny the allegations set forth in this paragraph.

29. (erroneously numbered as 30) Defendants deny the allegations set forth in this paragraph.

1 forth in this paragraph.

FIRST CAUSE OF ACTION

(42 U.S.C. Section 1983)

**(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN,
3 and DOES 1-10)**

4 31. (erroneously numbered as 32) Defendants incorporate herein their
5 responses to the allegations contained in paragraphs 1 through 30, as previously set forth.

6 32. (erroneously numbered as 33) Defendants deny the allegations set
7 forth in this paragraph.

SECOND CAUSE OF ACTION

(42 U.S.C. Section 1983)

(Against Defendants CITY, RICHARD WORD, and DOES 11-25)

10 33. (erroneously numbered as 34) Defendants incorporate herein their
11 responses to the allegations contained in paragraphs 1 through 32, as previously set forth.

12 34. (erroneously numbered as 35) Defendants deny the allegations set
13 forth in this paragraph.

14 35. (erroneously numbered as 36) Defendants deny the allegations set
15 forth in this paragraph.

16 36. (erroneously numbered as 37) Defendants deny the allegations set
17 forth in this paragraph.

18 37. (erroneously numbered as 38) Defendants deny the allegations set
19 forth in this paragraph.

20 38. (erroneously numbered as 39) Defendants deny the allegations set
21 forth in this paragraph.

THIRD CAUSE OF ACTION

(42 U.S.C. section 1983)

(Against defendant CITY OF OAKLAND)

24 39. (erroneously numbered as 40) Defendants incorporate herein their
25 responses to the allegations contained in paragraphs 1 through 38, as previously set forth.

26 40. (erroneously numbered as 41) Defendants deny the allegations set

1 forth in this paragraph.

2 41. (erroneously numbered as 42) Defendants deny the allegations set
3 forth in this paragraph.

4 42. (erroneously numbered as 43) Defendants deny the allegations set
5 forth in this paragraph.

6 43. (erroneously numbered as 44) Defendants deny the allegations set
7 forth in this paragraph.

8 44. (erroneously numbered as 45) Defendants deny the allegations set
9 forth in this paragraph.

10 45. (erroneously numbered as 46) Defendants deny the allegations set
11 forth in this paragraph.

12 46. (erroneously numbered as 47) Defendants deny the allegations set
13 forth in this paragraph.

14 **FOURTH CAUSE OF ACTION**
15 **(Assault and Battery)**
16 **(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN,**
17 **and DOES 1-10)**

18 47. (erroneously numbered as 48) Defendants incorporate herein their
19 responses to the allegations contained in paragraphs 1 through 46, as previously set forth.

20 48. (erroneously numbered as 49) Defendants deny the allegations set
21 forth in this paragraph.

22 49. (erroneously numbered as 50) Defendants deny the allegations set
23 forth in this paragraph.

24 50. (erroneously numbered as 51) Defendants deny the allegations set
25 forth in this paragraph.

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1 **FIFTH CAUSE OF ACTION**
2 **(False Arrest and Imprisonment)**
3 **(Plaintiff McMATH Against Defendant Officers LOUD, B OWLING, HARDISON,**
4 **BONIFACIO, MILLIKEN, and DOES 1-10)**

5 51. (erroneously numbered as 52) Defendants incorporate herein their
6 responses to the allegations contained in paragraphs 1 through 50, as previously set forth.

7 52. (erroneously numbered as 53) Defendants deny the allegations set
8 forth in this paragraph.

9 53. (erroneously numbered as 52) Defendants deny the allegations set
10 forth in this paragraph.

11 54. (erroneously numbered as 53) Defendants deny the allegations set
12 forth in this paragraph.

13 **SIXTH CAUSE OF ACTION**
14 **(Intentional Infliction of Emotional Distress)**
15 **(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN,**
16 **and DOES 1-10)**

17 55. (erroneously numbered as 56) Defendants incorporate herein their
18 responses to the allegations contained in paragraphs 1 through 54, as previously set forth.

19 56. (erroneously numbered as 57) Defendants deny the allegations set
20 forth in this paragraph.

21 57. (erroneously numbered as 58) Defendants incorporate herein their
22 responses to the allegations contained in paragraphs 1 through 50, as previously set forth.

23 **SEVENTH CAUSE OF ACTION**
24 **(Negligent Infliction of Emotional Distress)**
25 **(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN,**
26 **and DOES 1-10)**

58. (erroneously numbered as 59) Defendants incorporate herein their
responses to the allegations contained in paragraphs 1 through 57, as previously set forth.

59. (erroneously numbered as 60) Defendants deny the allegations set
forth in this paragraph.

1 60. (erroneously numbered as 61) Defendants deny the allegations set
2 forth in this paragraph.

3 **EIGHTH CAUSE OF ACTION**
4 **(Violation of Civil Code Section 51.7)**
5 **(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN,**
6 **and DOES 1-10)**

7 61. (erroneously numbered as 62) Defendants incorporate herein their
8 responses to the allegations contained in paragraphs 1 through 60, as previously set forth.

9 62. (erroneously numbered as 63) Defendants deny the allegations set
10 forth in this paragraph.

11 63. (erroneously numbered as 64) Defendants deny the allegations set
12 forth in this paragraph.

13 64. (erroneously numbered as 65) Defendants deny the allegations set
14 forth in this paragraph.

15 65. (erroneously numbered as 66) Defendants deny the allegations set
16 forth in this paragraph.

17 **NINTH CAUSE OF ACTION**
18 **(Violation of Civil Code Section 52.1)**
19 **(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN,**
20 **and DOES 1-10)**

21 66. (erroneously numbered as 67) Defendants incorporate herein their
22 responses to the allegations contained in paragraphs 1 through 65, as previously set forth.

23 67. (erroneously numbered as 68) Defendants deny the allegations set
24 forth in this paragraph.

25 68. (erroneously numbered as 69) Defendants deny the allegations set
26 forth in this paragraph.

27 69. (erroneously numbered as 70) Defendants deny the allegations set
28 forth in this paragraph.

TENTH CAUSE OF ACTION**(Negligence)****(Against Defendant Officers LOUD, BOWLING, HARDISON, BONIFACIO, MILLIKEN, and DOES 1-10)**

70. (erroneously numbered as 71) Defendants incorporate herein their responses to the allegations contained in paragraphs 1 through 69, as previously set forth.

71. (erroneously numbered as 72) Defendants deny the allegations set forth in this paragraph.

72. (erroneously numbered as 73) Defendants deny the allegations set forth in this paragraph.

ELEVENTH CAUSE OF ACTION**(Negligent Hiring, Retention, Training, Supervision, and Discipline)****(Against Defendants CITY, WORD, and DOES 11-25)**

73. (erroneously numbered as 74) Defendants incorporate herein their responses to the allegations contained in paragraphs 1 through 72, as previously set forth.

74. (erroneously numbered as 75) Defendants deny the allegations set forth in this paragraph.

75. (erroneously numbered as 76) Defendants deny the allegations set forth in this paragraph.

I

AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that the complaint fails to state a claim upon which relief can be granted.

II

AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege, on information and belief, that plaintiffs did not exercise ordinary care, caution, or prudence to avoid the alleged event and/or accident; consequently, the subsequent injuries or damages, if any, sustained by plaintiffs were proximately caused by

1 and contributed to by plaintiffs' comparative negligence, and any damages they might
2 otherwise be entitled to should be proportionately reduced by the degree of plaintiffs'
3 negligence.

4 **III**

5 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,
6 defendants allege that the injuries and damages plaintiffs complain of resulted from the
7 acts and/or omissions of others, or acts of God, and without any fault on the part of
8 defendants.

9 **V**

10 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,
11 defendants allege that any party or individual who contributed to and/or caused the
12 alleged injuries and damages was not acting as its agent or with its knowledge or within
13 the course and/or scope of employment with defendant CITY OF OAKLAND.

14 **VI**

15 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
16 defendants allege that, to the extent that plaintiffs may attempt to allege state claims,
17 these are barred by all applicable Government Code protections and immunities,
18 including, but not limited to, sections 815 through 900. Said sections are pleaded as
19 though fully set forth herein.

20 **VII**

21 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,
22 defendants allege that all of the actions of defendants were undertaken in good faith and
23 with the reasonable belief that such actions were valid, necessary, reasonable, lawful and
24 constitutionally proper, entitling defendants to the qualified immunity of good faith.

25 **VIII**

26 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

1 defendants allege that, if they in any fashion caused the injuries or damages alleged,
2 although such liability is expressly denied herein, their acts and/or omissions were
3 reasonable and privileged.

4 **IX**

5 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,
6 defendants allege, on information and belief, that plaintiffs failed to mitigate damages.

7 **X**

8 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,
9 defendants allege that, to the extent that plaintiffs allege or assert matters not contained in
10 a legally sufficient claim filed by them, this action is barred by the claims requirements set
11 forth in Government Code Section 905 et seq.

12 **XI**

13 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
14 defendants allege that this action is barred, under Government Code § 945.6, by plaintiffs'
15 failure to file their action within six months after denial of their claim by defendants.

16 **XII**

17 AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
18 defendants allege that this action is barred by all applicable statutes of limitations.

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PRAYER

WHEREFORE, defendants pray that:

1. Plaintiff takes nothing by his Complaint;
2. Defendants have judgment against Plaintiff;
3. Defendants be awarded their costs of suit; and
4. For such other and further relief as the Court may deem proper.

Dated: August 22, 2005

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Assistant City Attorney
RACHEL WAGNER, Supervising Trial Attorney

By: JS

Attorneys for Defendants
CITY OF OAKLAND, et al.